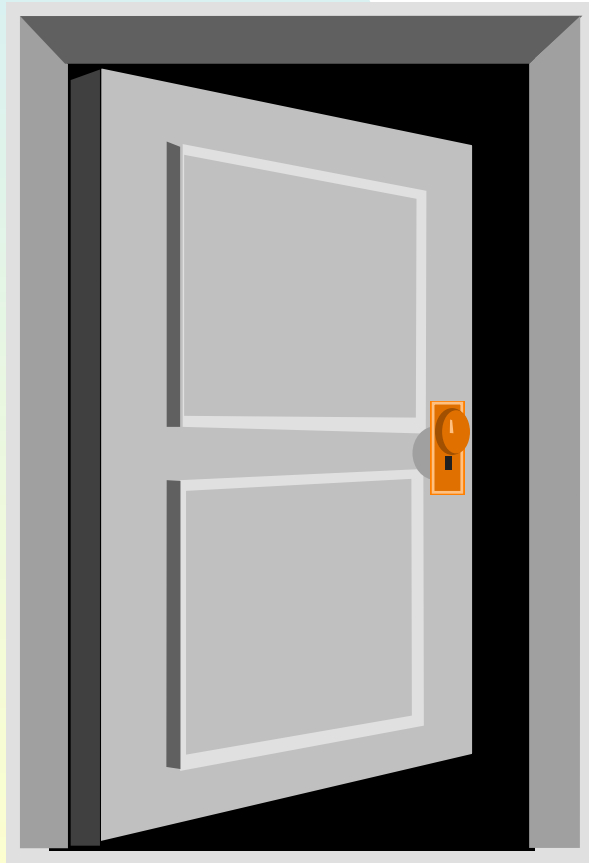


Promoting Voluntary Discovery, Disclosure and Correct of Violations of Environmental Law: EPA's Audit Policy



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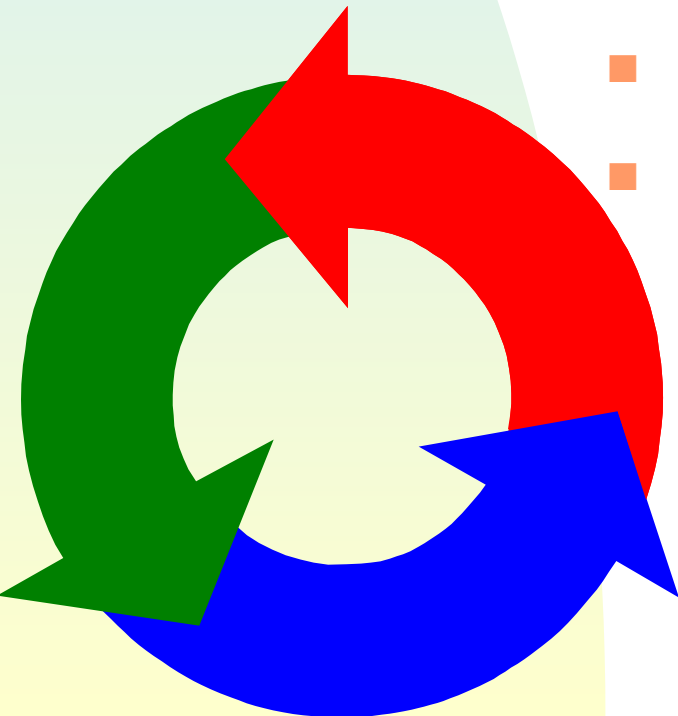
(214) 665-2178

History & Purpose of EPA's Audit Policy

- The policy has been in effect since 1995
- Safeguards human health and the environment by providing incentives for regulated entities to come into compliance with federal environmental laws and regs
- Designed to provide major incentives for regulated entities that voluntarily discover, promptly disclose, and expeditiously correct noncompliance, rendering formal EPA investigation and enforcement action unnecessary
- Reflects the input of industry, trade associations, state environmental program practitioners, and public interest groups

Summary of Events

- Facility conducts audit
- Facility self-discloses violations to EPA
- EPA evaluates self-disclosure
- EPA issues a final determination





Benefits to Facility

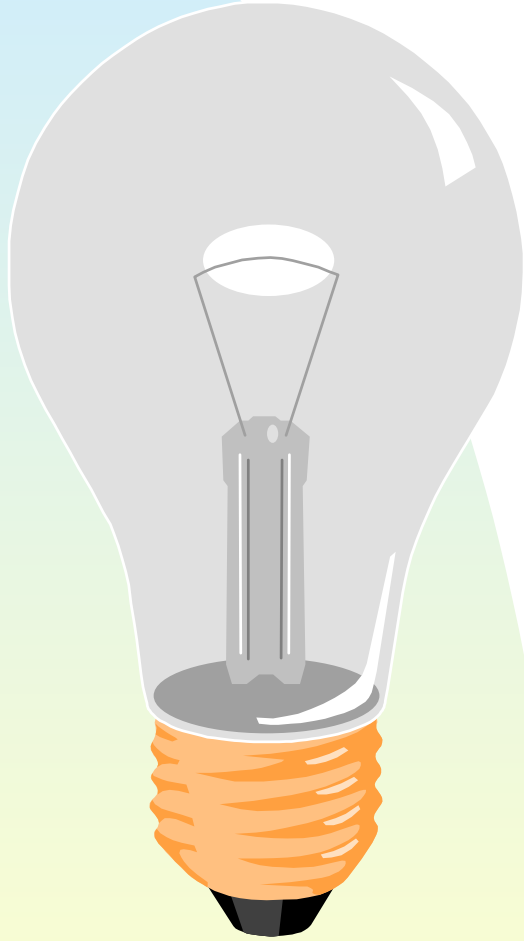
- No gravity-based penalties if all policy conditions are met (75% reduction if violations not found through an audit or environmental management system)
- No recommendation of criminal charges against regulated entity (unless prevalent management philosophy to conceal or condone violations and high-level corporate involvement in, or willful blindness to, violations)

Examples of PCB-related Violations (found in self disclosures)

- Improper storage of PCB waste
- Failure to mark PCB transformers or capacitors or PCB storage areas
- Paperwork violations (including failure to include information in the PCB Annual Document Log and failure to establish and maintain records)



Facility Responsibilities



- Conduct the audit and the self-disclosure in accordance with nine (9) conditions that must be met under the policy
- Submit self-disclosure letter to the EPA
- If necessary, provide additional information to the EPA
- If applicable, pay economic benefit penalty

Disclosure Letter

- Address to:
Samuel Coleman, P.E.,
Director, Compliance and
Enforcement Division (6EN)
U.S. E.P.A., Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
- In the letter, show how the 9
conditions are met (if necessary,
include supporting documentation)



Disclosure Letter, Continued

- Include contact information for facility person in charge of self-disclosure. EPA may contact facility with request for additional information



Nine Conditions

(See FR sections in handout)



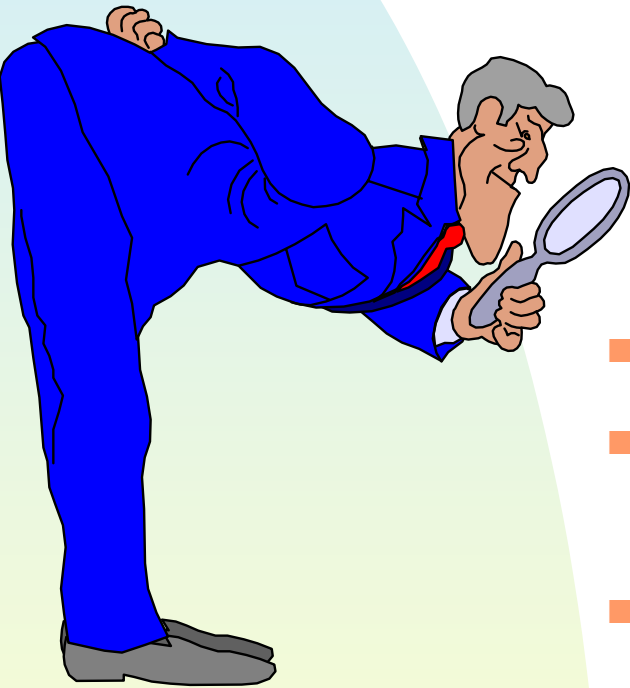
- 1. **Systematic Discovery (2 ways)**
- 2. **Voluntary Discovery**
- 3. **Prompt Disclosure**
- 4. **Independent Discovery and Disclosure**
- 5. **Correction and Remediation**
- 6. **Prevent Recurrence**
- 7. **No Repeat Violations**
- 8. **Certain Violations Excluded (2 types)**
- 9. **Cooperation**

Condition 1 - Systematic Discovery

- The violation is discovered through
 1. an environmental audit, OR
 2. a compliance management system/due diligence

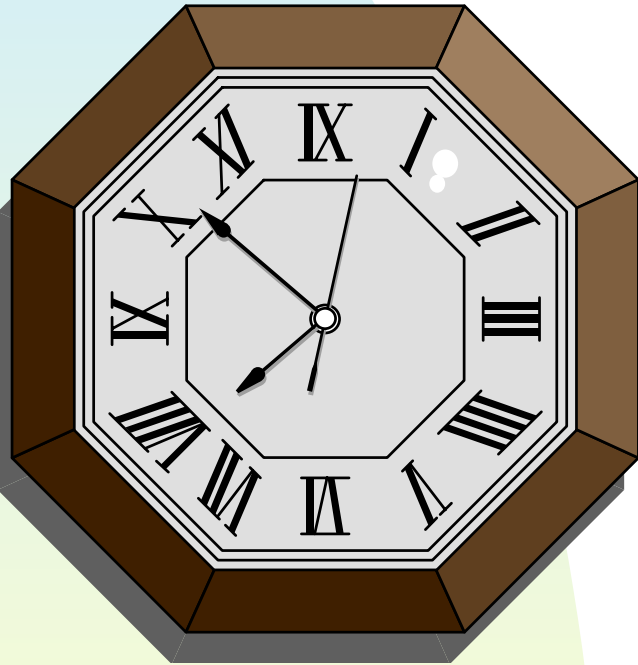


Condition 2 - Voluntary Discovery



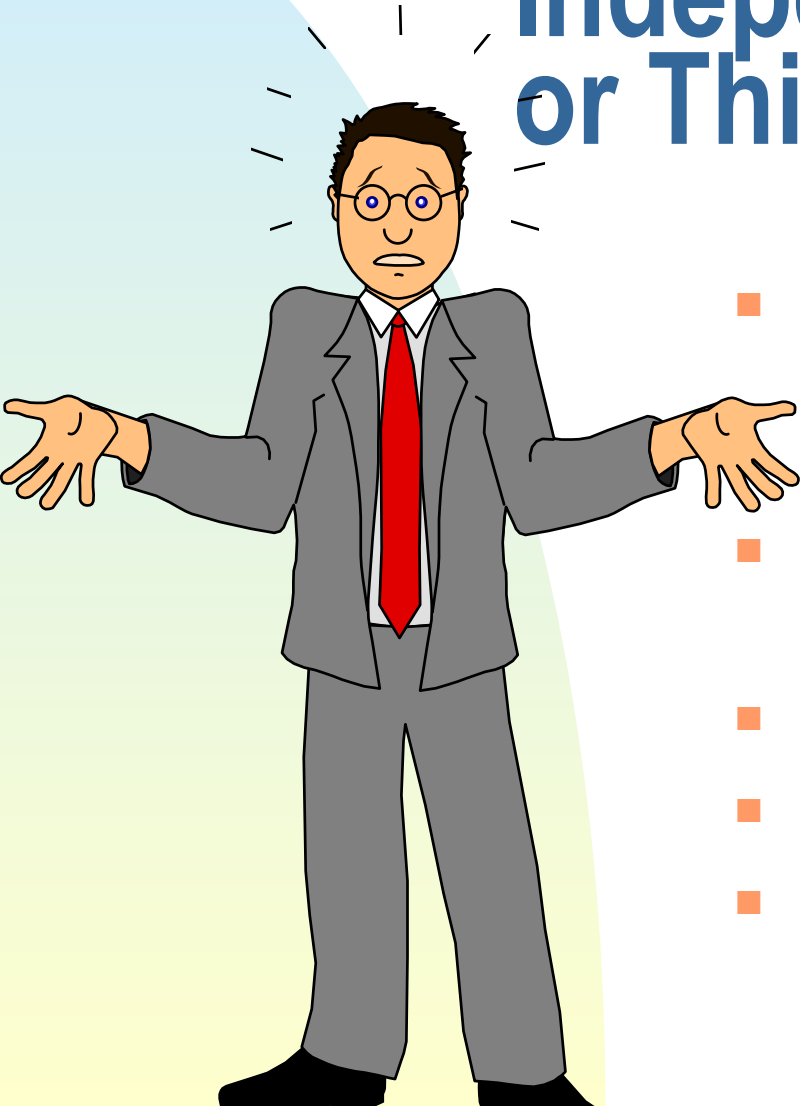
- The violation was discovered voluntarily, and not through a legally mandated monitoring or sampling requirement
- Examples of ineligible discoveries :
 - Monitoring required by permit (I.e. water DMRs),
 - Compliance audits under a consent decree (but note possibility for exception),
 - Required continuous emissions monitoring

Condition 3 - Prompt Disclosure



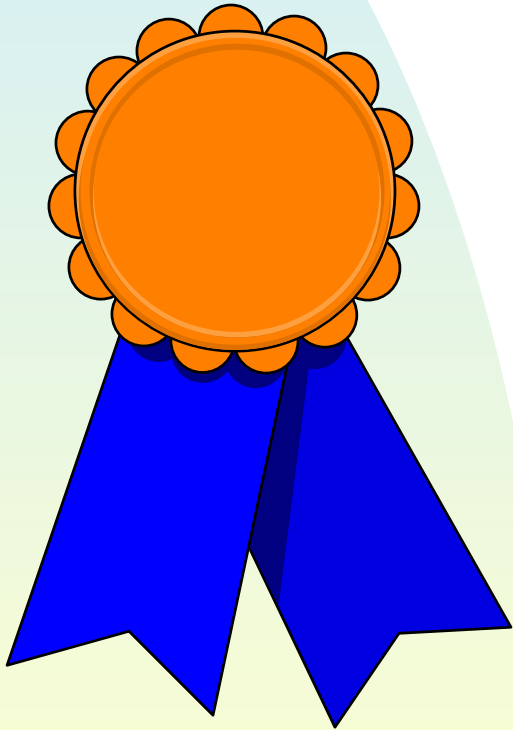
- Disclosure is made in writing to EPA within 21 days after entity discovers that the violation has, or may have, occurred
- Discovery begins when any officer, director, employee or agent of the facility has an objectively reasonable basis for believing that a violation has, or may have occurred

Condition 4 - Discovery & Disclosure Independent of Government or Third-Party Plaintiff



- Entity discovers and discloses the potential violation to EPA prior to:
 - 1. Commencement of a federal, state or local inspection or investigation,
 - 2. Notice of a citizen suit,
 - 3. Reporting by a whistleblower, or
 - 4. Imminent discovery of the violation by EPA

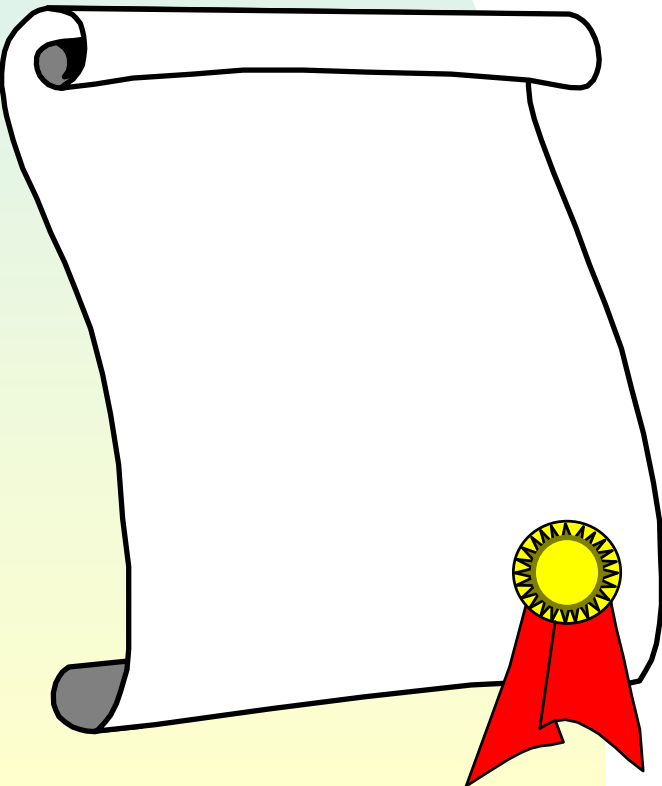
Condition 5 - Correction and Remediation



- Entity:
- CORRECTS violation within 60 calendar days from the point of discovery,
- CERTIFIES to EPA that violation has been corrected, and
- takes appropriate measures to REMEDY harm

Condition 6 - Prevent Recurrence

- The regulated entity commits in writing to take steps to prevent a recurrence of the violation

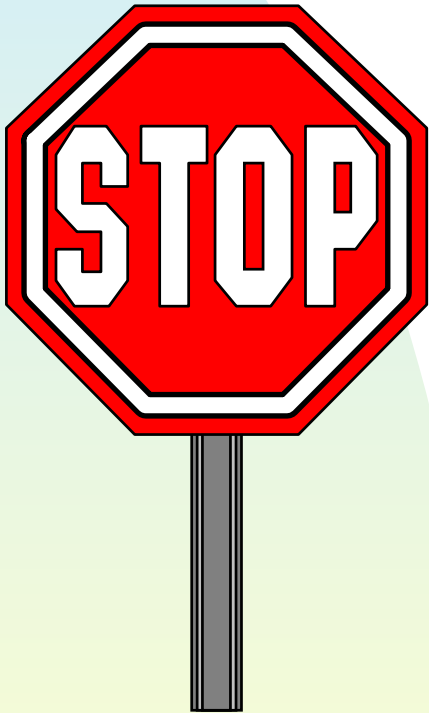


Condition 7 - No Repeat Violations



- The specific violation (or closely related) has not occurred previously within certain timeframes
- 3 year rule - within the past 3 years at the same facility
- 5 year rule - within the past 5 years as part of a corporate-wide pattern at multiple facilities
- Violation = Documented discovery (NOV, complaint...) by regulator or an act for which the entity has previously received penalty mitigation from a regulator

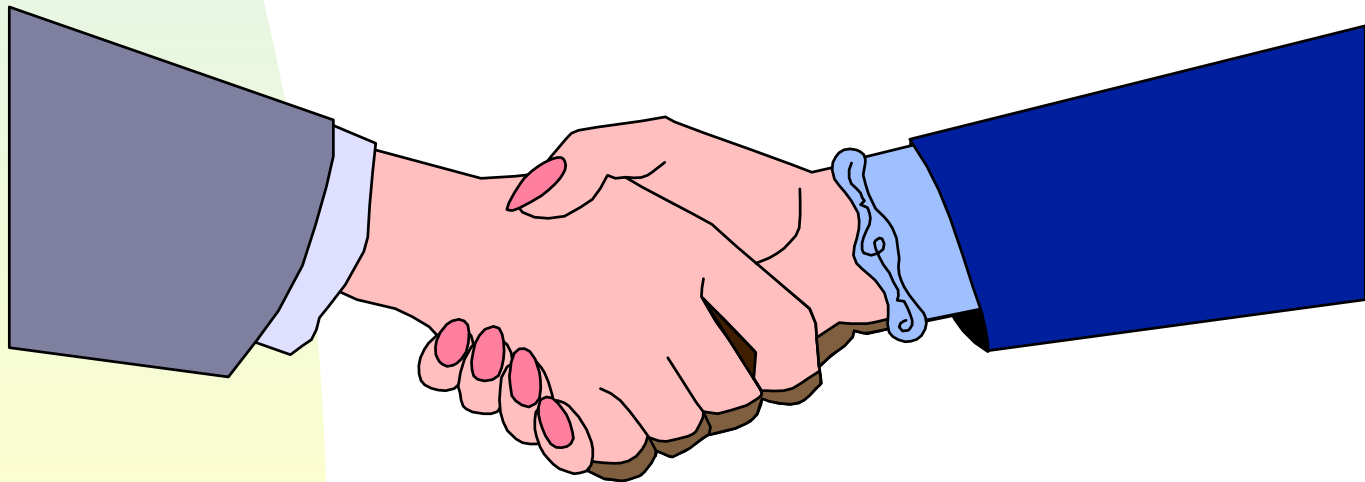
Condition 8 - Violations Excluded



- 1. Resulted in serious environmental harm, or presents an imminent and substantial endangerment, or
- 2. Violates the specific terms of an order

Condition 9 - Cooperation

- It's a voluntary program: Facility must cooperate with EPA (including submitting additional information if requested)



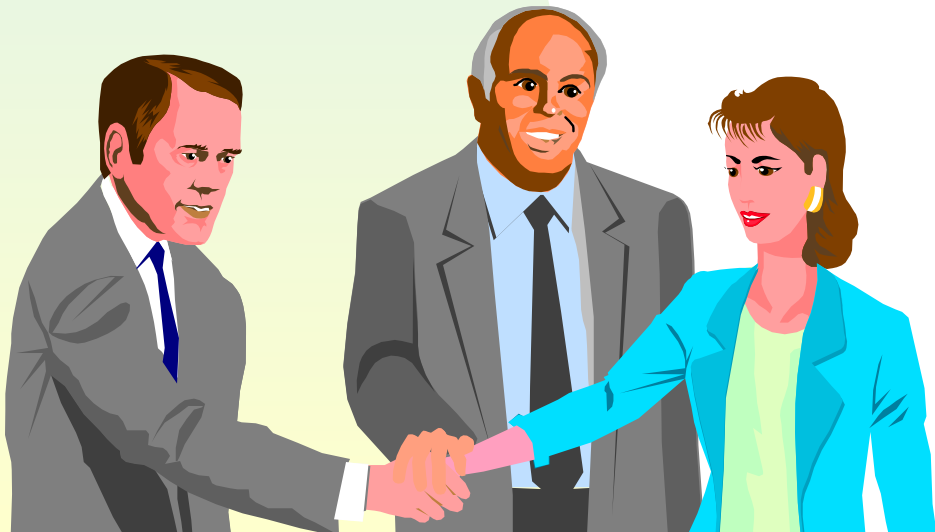
EPA's Responsibilities

- Analyze Self-Disclosure Letter (all 9 criteria met?)
- If necessary, contact the facility for more information
- If necessary, collect economic benefit penalty
- Issue a final determination



Results of EPA's User Survey:

- 9 out of 10 respondents would use the Policy again.
8 of 10 stated they would recommend the Policy to clients or counterparts
- "Companies can avoid penalties for doing the right thing, and everyone wins."
- "Created a partnership of trust between regulator and reporting regulated entity."
- "It enhances compliance, environmental performance and de-polarization of regulators and the regulated community."



Additional Information

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- EPA's Audit Policy Web Page:
<http://www.epa.gov/compliance/incentives/auditing/auditpolicy.html>
 - EPA Region 6 Contact:
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moncrieffe.marcia@epa.gov